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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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09/889,019

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Andrew Joseph Keogh

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1794

MAIL DATE

DELIVERY MODE

12/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/889,019

Applicant(s)

KEOGH, ANDREW JOSEPH

Examiner

Lien T. Tran

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 24-33, 53 and 61 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 24-33, 53, 61 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application
- ☐ Other: _____

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This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required.

Claims 61, 24-33, 53 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 61: Line 9, the phrase " during which procedure" is indefinite because it is not clear what procedure the phrase is referring to?

The indication of allowability of claim 35 and subsequently amended claim 61 is hereby withdrawn due to the finding of the new reference to Huber et al (5132133); the delay in the rejection is regretted.

Claims 61, 24-33, 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber et al in view of Bisson et al. and Zumbe et al (WO 97/34503)

Huber et al. disclose a process for form a reduced calorie snack product. The process comprises of feeding a partially cooked mixture into an extruder to form an extrudate, cutting the extrudate into appropriate lengths and treating the extrudate pieces to form final food products. The extrudate may be treated in a variety of ways. One way includes the steps of drying the pieces in an impingement oven and then frying the pieces. Such treatment reduces the frying times. The drying step can be done at temperature of 350-450 degree F or it can be done for a longer time at temperature of 150-225 degree F. Huber et al disclose a variety of subsequent treatments can be employed . (see col. 4 lines 29-43 and col. 5)

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Huber et al disclose the foodstuff composition is formed by extrusion; thus, it is inherent the composition is in a plastic state and capable of further expansion or contraction. When the composition comes out of the extruder, it is at atmospheric pressure. Huber et al teach heating to a first temperature after extrusion because they disclose drying in an oven at temperature of 150-225 (65-107 degree C). Huber et al do not disclose forming into balls by tumbling and passing into a second temperature and second pressure that is lower than the first temperature and pressure.

Bisson et al disclose a method for preparing puffed product. They teach to puff a food composition after coming out of the extruder in an enclosure where a subatmospheric pressure prevails. They disclose that under the effect of the decompression part of the water is evaporated while its temperature suddenly falls which causes puffing and rigidification of the cellular structure. The pressure in the enclosure is .02-.7 atms. (see col. 3 lines 20-34)

Zumbe et al teach tumbling to convert extrudate piece into spherical shape. They also teach to add chemical expanding agent to help in expansion (see pages 2, 4)

Huber et al disclose a variety of subsequent treatments can be employed to form the final product. Thus, it would have been obvious to one skilled in the art to use the puffing treatment under the pressure and temperature taught by Bisson et al when desiring to form a puffed final product. It would have been obvious to one skilled in the art to form spherical shape by tumbling as taught by Zumbe et al when desiring to make product having spherical shape. Applicant language of " during which procedure" is unclear because it is not known what procedure the claim is referring to. It is

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interpreted that the heating step to the first temperature occurs after extrusion and Huber et al disclose heating after extrusion. The language of the claims do not exclude the other steps disclosed in Huber et al. It would have been obvious to make the temperature here lower because Bisson et al disclose the temperature falls to cause puffing and rigidification of the cellular structure. It would have been obvious to one skilled in the art to determine the appropriate temperature and pressure depending on the substance being puffed and the degree of puffing through routine experimentation. It would have been obvious to use a belt conveyor to transport the composition to the enclosure where expansion takes place. The use of the conveyor belt enhances the speed of the process. It would have been obvious to add sweetening agent to make confectionery product when desiring a sweet product. The addition of sugar will make the product to be a confectionery product. It would also have been obvious to add a chemical expanding agent as taught by Zumbe et al when desiring to further expand the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 23, 2007


LIEN TRAN
PRIMARY EXAMINER
